

**IN THE UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT**

TED MARCUM,	: Case App. No. _____
Appellant/Petitioner,	: Case Trl. No. <u>C-1-02-425</u>
vs.	: <u>AFFIDAVIT UNDER DECLARATION OF PENALTY PERJURY ON "TIMELY" DE- LIVERY TO THE INSTITUTION'S MAIL- BOX, ON FILING NOTICE OF APPEAL</u>
OHIO ADULT PAROLE AUTHORITY,	:
Appellee/Respondent.	:

**AFFIDAVIT BY: APPELLANT, TED MARCUM**

- 1) On July 12th, 2007, Honorable Judge Herman Weber, U.S. Dist. Court Judge for The Souther District Court of Ohio, filed a Final Appealable Judgment Order "Denying, with prejudice," Appellant's Petition for a Writ of Habeas Corpus.
- 2) Todays date is August 10th, 2007, a total of Twenty-Nine (29) Days has passed as of today's date on filing a Notice of Appeal because there were a total of 31 days in the month of July. However, in light of the fact that tommorrow falls on a Saturday, the time period on filing a Notice of appeal is extended to the following working-day which is on Monday, August, 13th, 2007. Thus, this notice of appeal must be placed in the institution's "mailbox" by no later than Monday, August, 13th, 2007;
- 3) However, Appellant did "timely-file" a Motion in the trial Court for "Relief From Judgment" pursuant to Fed. Civ. Rule 60. The Federal Rules of Appellate Procedure state that the time period on filing a "Notice of Appeal" is "tolled" during the time period that a post-trial motion for relief from judgment is pending. See, e.g., Fed. App. R. P. 4(a)(4)(A)(vi) (stating that the time period for filing Notice of appeal begins to run within "thirty" days after a "timely-motion" for relief after judgment is decided by trial court);
- 4) The Federal Rules Appellate Procedure also state that the Filing of Notice of Appeal may be filed sooner than the required Thirty (30) day period when a motion for relief from judgment is pending. See, e.g., Fed. App. R. P. 4(a)(B)(i) (holding in relevant part, "... [t]he notice [of appeal] becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last susch remaining motion is entered.")
- 5) As of todays date, the United States District Court has not entered a final judgment on Appellant's post-trial motion for relief from judgment, which was timely-filed within "ten days" after the trial court's entry was journalized "denying" Petitioner's Writ of Habeas Corpus Petition.

6) Appellant states that the forgoing Notice of Appeal (including a photo-copy of this "Affidavit") has been placed in The Institutional "mailbox" (with an "Application" Requesting to proceed "In Forma Pauperis"), inside a preaddressed, prepaid legal envelope, which is being sent the Institutional Cashier's Office to enable the Cashier to properly fill-out the certificate of funds that are currently in the Appellant's account. The Cashier will then forward all legal papers to the Clerk of Court for filing with the Clerk of The United States District Court, at: 100 East Fifth Street, Cincinnati, Ohio 45202, on this 10th Day July, 2007, By: Regular 1st Class U.S. Mail, postage preaffixed;

7) Appellant further states that a true photo-copy of all legal papers, which includes the Notice of Appeal; This "Affidavit," copies of the trial court orders; and a photo-copy of the Application requesting to proceed in forma pauperis, has hereby been delivered inside the Institutional Mailbox for mailing to Mr. Marc Dann, Ohio Attorney General, at: 150 East Gay Street, Columbus, Ohio 43215, on the 10th Day of July, 2007, By: Regular 1st Class U.S. Mail, postage preaffixed.

WHEREFORE, Affiant, Ted Marcum, does hereby declare under declaration of penalty of perjury or falsification pursuant to 28 U.S.C. 1746, that the "Facts" stated within and throughout this "Affidavit," is hereby wholly correct and true.

AUGUST 10TH, 2007  
EXECUTED ON

Ted Marcum  
TED MARCUM, 549-841  
ROSS CORRECTIONAL INSTITUTION  
P.O. BOX 7010  
CHILLICOTHE, OHIO 45601